

IN THE MATTER OF THE FACT FINDING BETWEEN

CITY OF DAVENPORT,	:	
	:	
Public Employer,	:	
	:	FACT FINDER'S
and	:	RECOMMENDATION
	:	
DAVENPORT UNION OF	:	John L. Sandy, Esquire
PROFESSIONAL POLICE	:	Fact Finder
	:	
	:	
Employee Organization.	:	

APPEARANCES: City of Davenport
 Mary Thee
 Alan E. Guard

Union
 David Cunningham

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PUBLIC EMPLOYMENT
RELATIONS BOARD

I. AUTHORITY

This proceeding arises pursuant to the provisions of the Iowa Public Employment Relations Act, Chapter 20, Iowa Code (herein after referred to as "Act"), City of Davenport (hereinafter referred to as "City"), and the Davenport Union of Professional Police (hereinafter referred to as "Union or Employees"), have been unable to agree upon the terms of their collective bargaining agreement for the 2003-2004 contract. The parties efforts at resolving their disputes were unsuccessful and the parties selected the undersigned fact finder to "make written findings of fact and recommendations for the resolution of the dispute" in accordance with the Section 21 of the Act.

A hearing was conducted in Davenport, Iowa on Friday, March 7, 2003 and was completed the same day. The hearing commenced at 9:00 a.m. and was concluded at approximately 3:15 p.m..

The Parties submitted their final proposals which contained two items and subparts for fact finding.

Present for the hearing were: Martin Lopez, William Hurt, Ronald A. Waline, Eric J. Court, David J. Turner and David Cunningham for the Union, for the City, Mary Thee, Alan E. Guard, and Dave Geisler.

During the hearing, all parties were provided a full opportunity to present evidence and argument in support of their respective positions. The hearing was tape recorded in accordance with the regulations of the Board. Upon conclusion of the presentation of the evidence, the record was closed and the case was deemed under submission.

II. BACKGROUND

The Employer, a political subdivision is a city located in the east central Iowa along the Mississippi. It is one of the communities that comprise the "Quad Cities".

Union is the certified bargaining representative of approximately 160 bargaining unit employees. All of the employees provide law enforcement protection for the City.

The parties currently are in a one year contract which expires June 30, 2003.

III. STATUTORY CRITERIA

There are no explicit criteria in the Act by which the fact finder is to judge the reasonableness of the parties' proposals when formulating recommendations. It is generally agreed, however, that the Iowa legislature intended that fact finders formulate recommendations based upon the statutory criteria for arbitration awards contained in Section 22.9 of the Act. That Section provides:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees doing comparable work, giving consideration to factors peculiar to the area and the classification involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Moreover, Section 20.17(6) of the Act provides:

No collective bargaining agreement or arbitrator's decision shall be valid and enforceable if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending budget or would substantially impair or limit the performance of any statutory duty by the public employer.

The recommendation contained in this Report were made with due regard to the above statutory criteria.

IV. IMPASSE ITEMS

A. INSURANCE CONTRIBUTIONS

I) Section 8.4 Group Insurance governs contributions by employees to their health insurance plan.

Current relevant language in this topic include:

The City shall pay the full cost of single employee and dependant coverage for the insurance plans provided herein.

The City would modify the italicized language to provide that they will “*contribute to the*” cost of the same. They desire the following language be added to implement this change:

The Employee shall contribute 1% of the City’s premium cost each month for single coverage or 2% of the City’s premium cost each month for family coverage.

The Union resists these modifications and language changes and desires current contract language.

The City self insures itself and hires a third party administrator to administer it’s plan. The City has not conducted a full audit of its program in a number of years.

The City has placed into evidence statistics reflected in City Exhibit 19 that reveal claims have risen from a little over 4,000 from 1998 to 2002. Also, the average cost of these claims has risen substantially over this period. SEE; City Exhibit #23. That City Exhibit 20 reveals that total costs of these claims over the same period have risen from 4.4 million to 7.6 million. Extrapolating the current year’s costs based on January and February’s expenses posits an expense of a little over 8 million dollars. The City believes that the total cost will approximate a 10 to 15 per cent increase. The only constant over this period of time appears to be the employee contribution to this expense. SEE; City Exhibit #25.

The history of the parties contribution on this benefit is uncontrovertible. No cost other than deductible and co-pays cost have been assessed to the employees. The Union asserts that this benefit has in fact been bought and paid for in each year of negotiations. The Union further asserts that over the course of negotiated contracts the Union has accepted wage freezes to maintain the health insurance contract language.

The Union urges that a history of over 20 years of negotiations has cemented this benefit.

The parties stipulated that the top seven other cities in the state provide the comparability analysis. This analysis provides the following:

<u>Dental</u>	<u>Vision</u>	<u>City</u>	<u>Plan</u>	<u>Contribution</u>
Y	Y	Cedar Rapids	Single	7.50
			Family	36.50
Y	Y	Council Bluffs	Single	10.00
		Current Employees	Family	24.00
Y	Y	Council Bluffs	Single	10.00
		New Hires	Family	56.00
Y	Y	Des Moines	Single	0.00
		Regular Coverage	Family	0.00
N	N	Des Moines	Single	16.00
		HMO Coverage	Family	16.00
Y	N	Daybook	Single	0.00
			Family	0.00
N	N	Iowa City	Single	0.00
			Family	35.00
Y	N	Sioux City	Single	0.00
			Family	0.00
Y	N	Waterloo	Single	5.00
			Family	10.00

This analysis results in the following conclusions:

1. Over one half of the comparable communities require their employees to contribute at least a portion of the monthly premium for either single or family coverage for at least one plan.
2. That the amounts paid by the employees are on a fixed dollar amount as opposed to a per cent age basis.

3. Council Bluffs is the only community that differentiates between current employees and new hires in terms of the contribution to health insurance costs.

The City has advanced an inability to pay contention as it relates to this as well as other financial issues. These contentions relate to chapter 22.9(c) and (d) and 20.17(6). IOWA CODE.

The City asserts that health insurance benefits are generated by its "Total Employee Benefits Levies" which not only include health insurance but also a list of other benefits inclusive of retirement contribution F.I.C.A., and workers compensation costs. This levy; unlike some of it's counterparts is not regulated and can be increased by the action of the city council.

An overall analysis of the City's tax rate reveals that with the exception of Cedar Rapids and Dubuque, Davenport has the lowest tax rate amongst it's comparable communities. It is understood by the undersigned, that the City has set its future budget anticipating it's position for health insurance cost.

Taking all on these conditions and factors into consideration the undersigned finds the following:

1. That a history of negotiations for the bargaining unit has placed a premium on maintaining health insurance for it's membership without cost.
2. That escalating insurance costs were not contemplated by the parties to the extent they have increased for the employees of the unit.

It Is Therefore the undersigned's position that a bifurcated approach similar to Council Bluffs employees should be approved.

Certainly, the current employees who have given concessions in contract negotiations have a much more persuasive argument as to not participating in this increased cost. However, future employees can not make this same contention. This is especially evident where over half their counterparts in comparable communities pay some portion of their health care expense.

The City asserts that these assessments should be on a percentage basis. I am unable to reach this same conclusion.

It appears to the undersigned that all of the comparables contribute on a fixed dollar basis. The significance of this nuance is that each year it is anticipated this cost will increase. If it's a percentage basis the increased cost is automatically shouldered by the employees.

Requiring new hires to pay a portion of this cost is as far as the undersigned can find as appropriate. To this extent the undersigned **Finds As Follows:**

1. No change as to insurance cost will take place for all employees who are certified by the Union as of June 30, 2003.

2. All employees hired by the unit after June 30, 2003 will pay \$3.50 per month for single coverage and \$18.50 for family coverage.

ii) Paragraph two (2) of Section 8.4 Group Insurance provides:

A) The City will continue the current health insurance plan for all Union employees and their dependents. Also, in accordance with these changes, the City shall provide single employee coverage and dependant coverage for those electing same for outpatient Diagnostic, X-ray and Laboratory (DXL) Insurance and prescription insurance. A Directed P.P.O. with a 90/10 co-pay within the P.P.O. and a 80/20 co-pay outside of the P.P.O. pursuant to the term of this labor agreement, the Cost Containment Committee shall...

The City would modify the co-pay equation from 80/20 to a 70/30 allocation. To more fully understand this request one must understand that the City categorizes health care providers within two categories. One category has entered into a contract with the City to rebate or give a discount for services performed for City employees. Those providers are referred to as P.P.O. facilities and businesses. They provide a benefit to the City's plan similar to Blue Cross's preferred providers listing. It is assumed by the undersigned that due to the sheer size of the City's employee base, providers are willing to accept these price concessions to treat the large volume of City employees. These employees include other unionized employees as well as non union employees.

The City estimates that approximately 90% of all health care providers within the City participate in this plan. This list also includes both major hospitals. In an effort to have more employees seek out these providers versus their competitors, changing the co-pay from 80/20 to 70/30 will provide financial incentive for the employees to make this transformation.

The Union admits to a long history of design plan modifications but was unable to agree on this term as it related to the entire package resolution.

One must also recognize that a ceiling of \$500.00 for deductible or co-pay expenses exists in the plan. The significance of this is that the employee would need to incur \$2500 worth of medical care with a non P.P.O. before this deductible ceiling would be met. Under the revised 70/30 plan change, only approximately \$1670 worth of medical expenses would need to be incurred before maxing out the deductible.

This is a plan design which the undersigned finds as reasonable and necessary to contain spiraling health insurance costs.

This modification comports with the Unions long history of plan design modifications.

It is therefore the undersigned's finding that modification of co-pay from 80/20 to 70/30 for providers outside the P.P.O. is the most reasonable and should be adopted.

iii) Students and Grandchildren

The next language modification relates to addition of language which restricts the laundry list of dependents eligible for health insurance benefits. Although there is no current language in the contract, current practice permits dependent's to be covered until age 26 so long as they are full time students. Also, coverage is extended for dependents of dependents or the employees grandchildren.

The City desires to reduce the age of the dependent eligible for coverage to 24, assuming of course they are "full time students". The City will maintain coverage for current post secondary education dependents until they reach 26. All others will terminate at 24.

Currently, a high proportion of college/vocational technical students commence their pursuits at age 19. Assuming a 5 year tract to obtain their degree, the City's language change will address these individuals health needs.

The second strand of this language modification relates to severing dependents of dependents. These are essentially grandchildren being covered by the employees health insurance plan. As discussed previously, they are covered until age 26 under current contract coverage so long as they are full time students. Current dependents according to the City's proposed change would be grand fathered and provided insurance. Dependents of Dependents born after June 30, 2003 would not be eligible for coverage.

Once again, no major medical insurance coverage extends coverage to this degree. The undersigned is unaware of any law, statute or case which would extend this financial responsibility to the grandparent.

As previously mentioned, the City would seek to sever this coverage for dependents of dependents born after June 30, 2003.

The Union resists this modification. The Union is unable to cite any other communities health insurance plan which provides this benefit.

Compelling reasons are advanced for these design plan modifications by the City. The undersigned must recognize the fact that no comparable insurance coverages extend coverage to these beneficiaries. Conversely, the parties have forged these unique health insurance benefits for the benefit of their consistency over 20 plus years of negotiations.

The current fact finding award on these topics has now been drafted at least three times by the undersigned with varying resolutions. A tenet the undersigned has recited in every award is that the bargaining table give and take and not the fact-finders pen should be the means for these changes. This tenet is blind when favoring a party.

Unlike plan modifications as they relate to PPO's which have a maximum \$500 ceiling, dropping dependents of dependents and lowering the age for coverage of post secondary education students will have a dramatic impact. Currently 18 dependents are covered as dependents of dependents.

It is the undersigned's understanding these modifications in design plan changes have never before been presented for modification. The undersigned's position may be significantly different if these two design plan changes were before him after at least one attempt to raise them before a fact finder/arbitrator.

The balance between history of a benefit versus a total lack of comparability is a delicate one. This balance is weighted by the evidence that this is the first year that the parties have addressed the same at fact finding.

These conclusions are troublesome to the undersigned in light of other negotiated settlements by the City with other units the Firefighters Unit and non union employees. This discontinuity supports the conclusion that the length of the contract should be on a one year basis.

It is the undersigned's opinion that no changes in design plan changes as to age reduction and dependent dependents coverage be made for the next years contract.

B. WAGES

The City's proposal for the contract commencing July 1, 2003 and continuing until June 30, 2004 is for a 3.5 general wage increase.

Conversely, the Union proposed a 4.5 general wage increase.

The undersigned would like to address the City's assertions that they have an inability to pay the increase as proposed by the Union. It is noted that the City Council approved their budget for 2003-2004 which contemplated a 3.5 pay increase. If in fact, the City is correct in their assertions that they have an inability to pay, no further attention perhaps need be given to this topic.

The ability to pay for wages is statutorily quantified in Iowa Code Sections §§384.1 & 384.8. It is undisputed that the City is taxing under this statutory criteria at its maximum. These levies unlike employee benefits are frozen. It is also uncontroverted that Davenport is in the unique position of paying for their garbage removal and library services from this fund. No other comparable community extracts Garbage service expense from these levies. Every other comparable community has a Garbage fee. A number of communities have library fee.

The undersigned does not find an inability to pay in this matter.

Enactment of a Garbage fee like every other city reflected by the parties comparable communities prohibits the conclusion the City would have me find. This in and of itself would free up three quarters of a percent of funds.

Also, noteworthy is the fact by the City's own exhibit Davenport save for Dubuque and Cedar Rapids has the lowest tax rate amongst its comparables. The undersigned recognizes that this is only one quotient in the tax equation. I am unconvinced however that the City will have an inability to pay when it relates to either proposal. The fact is that the City chooses not to fund these expenses by their own actions, their refusal to enact a garbage fee.

The Union Exhibit #6A reflects that over the course of the last 7 years the comparable communities had an average increase in wages of 3.41% Davenport averaged 3.36%. Therefore, the City's average raises for this unit have been increased .05% below the average. For 2003-2004, the average increase by comparable communities is 3.89%.

The City contends that the aforementioned average is inflated due to the City of Des Moines, The City asserts that Des Moines increase is an attempt to bring their employees wages in line with others. Even assuming this to be correct, the remaining six comparable communities averaged 3.70% increase.

It is uncontroverted that Davenport's law enforcement are either the best or second to the best compensated law enforcement officers amongst their counterparts. In order to maintain this status and be reasonable in light of comparable increase for like communities I am unable to accept neither the City's recommendation nor the Union's recommendation.

It is the undersigned's belief that a 3.84% increase to the general wage is appropriate. This increase is based on the comparable communities increase less .05%. Historically, there will always be contentions that comparable communities have increased their wages in an effort to raise the status of their employees. Conversely, arguments can be made that if we exclude Des Moines 5% raise we should likewise throw out Iowa City's raise of 3.0%. By deleting the high and low both we average an increase of 3.85%. This figure is but a hundredth of a per cent from my finding.

It Is Therefore the undersigned's finding that a 3.84 general wage increase should be granted to the employees of this unit.

CONCLUSION

The following is a synopsis of the impasse items and the undersigned's recommendations.

- A.
 - i) No variance from current contract language as to current employees of the unit as to contribution towards health care coverage. Employees hired after June 30, 2003 will be required to pay \$3.50 for single coverage and \$18.50 for family coverage.
 - ii) Current language for non PPO medical coverage modified from a 80/20 to 70/30 basis.
 - iii) Current language is silent, however, past practice includes dependents of dependents and post secondary education dependents until age 26. No addition of language restricting these practices.
- B. A general wage increase of 3.84.

Respectfully Submitted

Sandy Law Firm, P.C.

By


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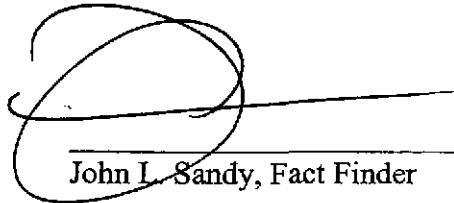
CERTIFICATE OF SERVICE

I certify that on the 18th day of MARCH, 2003, I served the foregoing Award on Fact finding upon each of the parties to this matter by (_____ personally delivering)(X mailing) a copy to them at their respective addresses as shown below:

— Mary Thee

David Cunningham

I further certify that on the 18th day of MARCH, 2003, I will submit this Award for filing by (_____ personally delivering) (X mailing) it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.


John L. Sandy, Fact Finder

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